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Attorney for Plaintiffs
Juan Gonzalez and Ricardo Mendoza

UNITED STATES DISTRICT COURT

FOR DISTRICT OF NORTHERN CALIFORNIA

JUAN GONZALEZ and RICARDO
MENDOZA, individually and on behalf of
others similarly situated

Plaintiffs,

vs.

DDR PARTNERS, INC. dba PACIFIC
ATHLETIC CLUB, and DOES 1-10

Defendants

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL:**

1). Violation of California Labor Code §1194;
2). Violations of The Fair Labor Standards Act
(Non-payment of overtime); 3). Violation of
Labor Code §226.7; 4). "Waiting Time"
Penalties under California Labor Code §203;
and 5). For Restitution of Unpaid Wages in
Violation of California Unfair Trade Practices
Act under Business and Professions Code §
17203

Plaintiffs, JUAN GONZALEZ ("GONZALEZ") and RICARDO MENDOZA
("MENDOZA"), on their own behalves and on behalf of others similarly situated, alleges as
follows:

NATURE OF CLAIM

1. This is a class action on behalf of putative members who had been employed on
an hourly rate basis by Defendants DDR PARTNER, INC. dba PACIFIC ATHLETIC CLUB,
and DOES 1-10 (collectively referred to as "PACIFIC ATHLETIC") for some period during the
last four years of the filing of this Complaint, seeking damages arising out of their employer's
failure to pay overtime as required by the Fair Labor Standards Act ("FLSA") and the California

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FILED
AUG 11 2008
E-FILED
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Cas No. 08 03814 PVT

1 Wage Orders and statutes. On their own behalves and on behalf of other similarly situated
2 individuals who fall within the relevant statutory periods, Plaintiffs seek compensatory damages
3 for unpaid wages under California Labor Code and Wage Orders, liquidated damages under 29
4 U.S.C. §216(b), damages under California Labor Code §226.7 for failure to provide meal and
5 rest periods, waiting time penalties under California Labor Code § 203, and attorney's fees, costs,
6 pre judgment interest pursuant to California Labor Code § 1194(a) and 29 U.S.C. § 216(b), and
7 restitution under California Unfair Trade Practices Act under California Business and
8 Professions Code § 17203.

9 2. Plaintiffs bring this collective action on behalf of themselves and other hourly
10 paid employees pursuant to 29 U.S.C. §216(b) with respect to unpaid overtime and liquidated
11 damages arising under Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.*

12 PARTIES

13 3. At all times relevant herein, Plaintiff GONZALEZ is an individual resident of
14 Sunnyvale, California.

15 4. At all relevant times herein, Plaintiff MENDOZA is an individual resident of San
16 Ramon, California.

17 5. Individual Defendants DDR PARTNERS, INC. is the owner of the sole
18 proprietorship of business called PACIFIC ATHLETIC CLUB, with their primary place of
19 business in Redwood City, California.

20 6. The individual Defendants Does 1 to 10, inclusive, according to information and
21 belief, are the owners and officers or managers of PACIFIC ATHLETIC CLUB, having control
22 over the work conditions and situation of Plaintiffs and other employees.

23 SUBJECT MATTER JURISDICTION AND VENUE

24 7. Subject matter jurisdiction of this action of this Court is based upon Fair Labor
25 Standards Act, 29 U.S.C. §§201 *et. seq.* and the pendant jurisdiction of this Court.

8. This Court is a proper venue, since all events giving rise to the claims of the
named Plaintiffs and the putative class members.

SUBSTANTIVE ALLEGATIONS

9. Plaintiffs were employed on an hourly rate by Defendants for some period during last three years.

10. During last three years, Plaintiffs and other hourly paid employees worked over 8 hours a day and forty fours a week from time to time on regular basis.

11. Plaintiffs and such other hourly rate employees were not subject to any exemptions from overtime pursuant to the Fair Labor Standards Act and California Labor Code.

12. Within 72 hours of termination of Plaintiffs and other hourly rate employees, Defendants willfully failed to pay them wages owed, the amount of which was readily ascertainable at the time of termination.

COUNT ONE

Violation of California Labor Code, Non Payment of Overtime

Labor Code Sections §510

13. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-12 as if fully stated herein.

14. During last three years, Plaintiffs' employment was subject to California Labor Code Sections 1194 and 510, and the applicable Wage Orders promulgated by the California Industrial Welfare Commission pursuant to Labor Code Section 1173, which required all employees to be paid overtime for work performed in excess of forty hours per week or eight hours per day, unless specifically exempted by the law.

15. During their employment with the Defendants, Plaintiffs regularly worked in excess of forty hours per week and in excess of eight hours per day. Plaintiffs received only straight time, or at some times nothing at all, from Defendants for these overtime hours.

16. During last the three years, Defendants knowingly caused, suffered and permitted Plaintiffs to regularly work in excess of forty hours per week and eight hours per day without paying them one and one half or double of his regular rate of pay.

17. By not paying overtime wages in compliance with the state law, Defendants

1 violated Plaintiffs' rights under the law, specifically California Labor Code Section 1194.

2 18. As a direct and proximate result of Defendants' failure to pay proper wages under
3 the California Wage Orders, Plaintiffs incurred general damages in the form of lost overtime
4 compensation in amounts to be proven at trial.

5 19. Defendants had been aware of the existence and requirements of the California
6 Labor Code Sections 510 and 1194 and the Wage Orders, and willfully, knowingly and
7 intentionally failed to pay Plaintiffs the overtime compensation due to them at the time their
8 employment ended.

9 20. Plaintiffs were required to retain an attorney for the purpose of bringing this
10 action and are entitled to an award of attorney's fees and pre-judgment interest pursuant to
11 California Labor Code Section 1194(a).

12 WHEREFORE, Plaintiffs pray for judgment as set forth below.

13 COUNT TWO

14 *Violation of the Fair Labor Standards Act*

15 *29 U.S.C. § 201, et seq.*

16 21. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-20 as if fully
17 stated herein.

18 22. At all relevant times herein, Plaintiffs' and other hourly rate employees'
19 employment were subject to the provisions of the Fair Labor Standards Act of 1938, as amended
20 ("FLSA"), 29 U.S.C. Section 201, *et seq.*

21 23. 29 U.S.C. § 207 requires all employees to be paid overtime for work performed in
22 excess of forty hours per week, unless specifically exempted by the law.

23 24. Although Plaintiffs and other hourly rate employees were not so exempt during
24 their employment with Defendants, and although Defendants had been fully aware of both the
25 hours worked and the duties assigned to the Plaintiffs and other hourly rate employees,
Defendants knowingly caused, suffered, and permitted Plaintiffs and other hourly rate employees
to regularly work in excess of forty hours per week without paying them one and one half of

1 their regular rate of pay.

2 25. By not paying overtime wages in compliance with FLSA, Defendants violated the
3 rights of Plaintiffs and other hourly rate employees under FLSA.

4 26. As a direct and proximate result of Defendants' failure to pay proper wages under
5 the FLSA, Plaintiffs and other hourly rate employees incurred general damages in the form of
6 lost overtime wages.

7 27. Defendants intentionally, with reckless disregard for their responsibilities under
8 the FLSA, and without good cause, failed to pay Plaintiffs and other hourly rate employees their
9 proper pay, and thus Defendants are liable to Plaintiffs and other hourly rate employees for
10 liquidated damages in an amount equal to their lost overtime wages pursuant to 29 U.S.C. §
11 216(b).

12 28. Plaintiffs were required to retain an attorney for bringing this action and are
13 entitled to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b).

14 WHEREFORE, Plaintiffs pray for judgment as set forth below.

15 **COUNT THREE**

16 *Failure to Provide Meal Periods*

17 *California Labor Code § 226.7*

18 29. Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1-28 as
19 if fully restated hereinafter.

20 30. At all relevant times herein, Plaintiffs' employment with Defendants was subject
21 to the provisions of California Labor Code § 226.7, which requires the employer to provide
22 employees a thirty-minute meal break for every five hours worked, unless expressly exempted.

23 31. During Plaintiffs' employment with Defendants, Plaintiffs worked at least 5 hours
24 a day, and were not provided meal period as required by law.

25 32. For each time that Plaintiffs were not provided the required meal period, Plaintiffs
are entitled to recover one additional hour of pay at each employee's regular rate of

1 compensation pursuant to California Labor Code section 226.7.

2 33. Plaintiffs are therefore entitled to payment, in an amount to be proved at trial for
3 additional pay for each meal period that Defendants failed to provide.

4 WHEREFORE, Plaintiffs pray for judgment as set forth below.

5 **COUNT FOUR**

6 *Penalty for Failure to Pay Wages at Termination*

7 *California Labor Code Sec. 203*

8 34. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-33 as if fully
9 stated herein.

10 35. Within 72 hours of the termination of Plaintiffs, Defendants failed to pay them the
11 wages owed ascertainable at the time of termination

12 36. Failure to pay proper wages at an employee's termination as required by Labor
13 Code §201 subjects the employer to penalties provided for in Labor Code Section 203, up to 30
14 days of wages.

15 37. As of this date these wages have not been paid to Plaintiffs, thus making
16 Defendants liable to Plaintiffs for penalties equal to 30 days wages in amount to be proven at
17 trial.

18 WHEREFORE, Plaintiffs pray for judgment as set forth below.

19 **COUNT FIVE**

20 *For Restitution of Unpaid Overtime Wages
in Violation of California's Unfair Trade Practices Act*

21 *Business and Profession Code § 17203*

22 38. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-37 as if fully
23 stated herein.

24 39. At all times relevant herein, the employment with Defendants was subject to
25 California Labor Code and applicable Wage Orders promulgated by the California Industrial
Welfare Commission as well as FLSA, all of which required all employees to be paid overtime

1 for work performed in excess of forty hours per week or eight hours per day unless specifically
2 exempted by the law. California law also requires premium pay for missed meal periods.

3 40. During the last three years, Defendants were subject to the California Unfair
4 Trade Practices Act (California Business and Professions Code Section §17000 *et seq.*), but
5 failed to pay the Plaintiffs overtime pay and premium pay for missed meal periods as required
6 by FLSA, California Labor Code and applicable Wage Orders.

7 41. During the last three years, Defendants kept to themselves the unpaid overtime
8 and meal period premiums which should have been paid to the Plaintiffs.

9 42. By doing so, Defendants violated California Unfair Trade Practices Act,
10 Business and Professions Code §17200, *et seq.* by committing acts prohibited by applicable
11 California Wage Orders as well as FLSA, and thus giving them a competitive advantage over
12 other employers and businesses with whom Defendants were in competition and who were in
13 compliance with the law.

14 43. As a direct and proximate result of Defendants' violations, the rights of the
15 Plaintiffs and other hourly rate employees, under the law were violated, causing them to incur
16 general damages in the form of unpaid wages and lost wages to which they were legally
17 entitled.

18 44. The Defendants had been aware of the existence and requirements of the Unfair
19 Trade Practices Act and the requirements of state and federal wage and hours laws, but
20 willfully, knowingly, and intentionally failed to pay Plaintiffs overtime pay due.

21 45. Having been illegally deprived of the overtime pay and other wages to which
22 they were legally entitled, Plaintiffs herein seek restitution of such wages pursuant to the
23 Business and Professions Code §17203.

24 WHEREFORE, Plaintiffs pray for judgment as set forth below.
25

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment against the Defendants and demand as follows:

1. Award compensatory damages for unpaid overtime in amounts to be proven at trial to Plaintiffs;

2. Award liquidated damages equal to the overtime pay owed to Plaintiffs;

3. Award to Plaintiffs the meal period premium owed during last four years;

4. Award to Plaintiffs the pre-judgment interest of 10% on the unpaid overtime compensation and unpaid meal period premium pursuant to California Labor Code §§ 1194(a) & 218.6.

5. Award the Plaintiffs the waiting time penalty damages of thirty days wages pursuant to California Labor Code Section 203 in amounts to be proven at trial;

6. Award Plaintiffs the restitution of unpaid overtime pay and other wages pursuant to California Business and Professions Code §17203 in amounts to be proven at trial;

7. Enter a permanent injunctive order against Defendants ensuring the compliance with the FLSA and California Labor Code and wage orders;

8. For reasonable attorney's fees pursuant to California Labor Code §1194(a) and 29 U.S.C. §216(b) of the FLSA;

9. Award Plaintiffs the costs of suit herein.

10. Grant such other and further relief as the Court may deem appropriate.

Dated: August 8, 2008

By: /s/ ADAM WANG

Attorney for Plaintiffs

JS-44 - No. CA 115 (Rev. 4/97)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

I.(a) PLAINTIFFS

JUAN GONZALEZ and RICARDO MENDOZA

DEFENDANTSDDR PARTNERS, INC. dba PACIFIC ATHLETIC CLUB, and DOES **ADH****(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)**

San Mateo

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. **San Mateo****(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

Adam Wang
12 South First Street, Suite 613
San Jose, CA 95113

ATTORNEYS (IF KNOWN)**C08 03814****PVT****II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)**

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

(For diversity cases only)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl.Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)29 U.S.C. 201, et seq.
Wage & Hour -- overtime violation**VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$**

UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".****IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE A "X" IN ONE BOX ONLY)** ☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

8/16/08